

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 724 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

AND

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JAYANTILAL KISHANLAL JAISWAL

Appearance:

Mr. B.D. Desai, APP for the appellant.

(MR MC KAPADIA) for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT and
MR.JUSTICE J.R.VORA

Date of decision: 10/01/2000

ORAL JUDGEMENT (Per: H.R. Shelat, J.)

The respondents, who were tried in connection with the offences punishable under Section 7, 12 & 13(2) of the Prevention of Corruption Act, 1988, in the Court of Special Judge at Mehsana in Special Case No. 19 of 1989, came to be acquitted thereof on 18th day of May

1992. The prosecution, feeling aggrieved, has preferred this appeal challenging the legality & validity of the order of acquittal.

2. Few facts for dealing with the relevant contentions raised may be stated. Yusufkhan Bhurekhan, the complainant was having the motor repairing garage at Patan at the relevant time. He was the owner of metador bearing No. GRW 1489. He was also the owner of a truck and a jeep. The respondent No.1 was serving as P.S.I. in Traffic Branch and respondent No.2 was serving as Unarmed Police Constable in Traffic Branch of Patan City. Respondent No.3 was having the Pangalla with whom the respondents No. 1 and 2 had cultivated close relations for collecting the amounts of bribe. It is the case of the prosecution that Yusufkhan Bhurekhan was carrying the passengers in his metador from one place to another without any pass or permit. As he was illegally carrying the passenger the respondents No. 1 & 2 were for the purpose of conniving the wrong being done, demanding the bribe at the rate of Rs.300/- per month regularly, and Yusufkhan also used to make the payment so that he could ply the metador for the purpose of carrying the passengers illegally and have the earnings without any hindrance and legal action. About 4 to 5 months prior to December 1998, the respondent No.1 did not receive the amounts of monthly instalments. He therefore on 20th December 1998 intercepting the metador threatened the driver and the cleaner that if amounts of instalments were not paid to him at the earliest he would be taking legal action and the respondents No. 1 & 2 would be put to unbearable hardships and precarious situation. Yusufkhan Bhurekhan then met the respondent No.1. At that time respondent No.1 made it clear that unless the amounts were paid soon, the metador would be seized. Yusufkhan who was chafed found that he was having no option but to yield. He was however not willing to pay but at that time he delusively assured that he would be paying the instalments regularly and would pay the amounts that had become due on the next day or the third day near the Bus Stand at 5.00 p.m. He therefore went to ACB Office, Ahmedabad, where Mr. A.F. Thakor was serving as Police Inspector. He apprised what had happened till then, and lodged the complaint against respondents. The panchas were called. They were apprised about the role they had to play during the trap to be laid. It was decided that panch No.1 would remain all throughout with Yusufkhan Bhurekhan and would hear the talk that would take place between respondent No.1 and Yusufkhan. Yusufkhan will then give a signal after the amounts were accepted. Thereafter, the amounts of

Rs. 300/= were paid to the Police Inspector. There were four currency notes, each of Rs. 50/- and one currency note of Rs. 100/-. On all those five notes at the instruction of the Police Inspector, anthracene powder was applied and then undergoing necessary formalities the Police Inspector, Yusufkhan, few Police Constables & panchas went to Patan so as to lay the trap. As per the plan they all reached very close to Khilachand Centre in Patan, and the members of the raiding party were deployed at different places wherefrom the signal which was to be given by Yusufkhan could be seen. Yusufkhan, the complainant and panch No.1 went to the respondent No.1 with whom respondent No.2 was present. Both then demanded the amount and realising that the complainant had brought the amount, they directed to go to respondent No.3 having pangalla nearby and pay to him because as alleged by the prosecution respondent No.3 was acting as the collecting agent of respondents No. 1 and 2, and directly the respondents No. 1 & 2 were not accepting. The panch No.1 and the complainant went to the pangalla of respondent No.3 and paid Rs. 300/- on which the anthracene powder was applied. Yusufkhan Bhurekhan then as per the understanding gave a signal and immediately the members of the raiding party who were deployed nearby rushed there and caught hold of all the respondents. Necessary formalities about seizure of the notes, examining the notes in ultra-violet lamp etc., were undergone and Panchnama was also drawn. The Police Inspector, Mr. Thakor thereafter handed over the investigation to Gajendrasinh Pratapsinh Puvar who was serving as Police Inspector, Mehsana. At the conclusion of the investigation, a chargesheet against all the three respondents for the aforesaid offences came to be filed in the Court of the Special Judge at Mehsana who hearing the parties framed the charge at Exh. 18 to which the respondents pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence. Appreciating the evidence, the then learned Special Judge reached the conclusion that prosecution had failed to establish the charge levelled against all the 3 respondents. He did not accept the testimony of Yusufkhan Bhurekhan, the complainant on the ground that panch No.1 had turned hostile and Yusufkhan was having the status not better than the accomplice. Necessary corroboration was therefore required which was wanting in the case etc.,. He, therefore, passed the order of acquittal which is challenged in this appeal.

3. Mr. B.D. Desai, the learned APP, while assailing the order of acquittal, submits that the learned Judge has not correctly appreciated the evidence

on record. Even if the panch No.1 turned hostile it was not the rule of law to insist for corroboration. Even on the sole evidence of the complainant or the Police Officer laying the trap the court can convict the accused. Further, the evidence of the complainant ought not to have been brushed aside on the ground of his being accomplice. It is also the contention that when the ultraviolet lamp procedure was being undergone, necessary fluorescent blue marks could be seen on the tips of the fingers of respondent No.3 and also the complainant who had paid the amount to respondent No.3 and that was the reliable evidence on record corroborating the say of the complainant and establishing the charge beyond reasonable doubt.

4. We have carefully gone through the entire evidence as well as the judgment rendered by the Special Judge and we generally agree with the learned Special Judge. He has correctly appreciated the evidence and drawn the conclusions though of course we do not agree with him that the complainant paying the amount of bribe at the time of trap is accomplice and his evidence is required to be corroborated and we see no reason to upset the same. It may also be mentioned that as held by the Apex Court in the case of Girijanandini Devi and others Vs. Bijendra Narain Choudhary - AIR 1967 S.C.1124, when we generally agree with the reasonings of the lower court, it is not necessary to restate the same. In this case, therefore, it would not be necessary for us to deal with every point in details. This appeal fails on one material point and therefore we would be dealing with that point alone going to the root of the case, making it clear at the cost of repetition that on other points the learned Judge has not fallen into error as contended by Mr. Desai, the learned APP.

5. In order to prove the charge of corruption, the prosecution has to prove 'demand' and 'acceptance' without any doubt, and if one of them is not proved, being the vital part, the offence cannot be said to have been constituted and the conviction cannot be sustained, if the accused is convicted by the lower court. This is what is made clear by this Court in the decisions of Kanubhai Kantibhai Patel Vs. State of Gujarat - 1998 (1) G.L.H. 924 and Gopal Lal Ghisulal Chhipa & Ors. Vs. State of Gujarat - 1998 (1) GLH 943. In the case on hand, the evidence of the complainant regarding demand is doubtful because as alleged by the prosecution few days prior to the date of the incident respondent No.1 had demanded the amount from the driver and cleaner of the metador. It is pertinent to note that neither the

cleaner nor the driver of the metador is examined to prove the fact regarding demand. It is also not explained why one out of those two could not be examined. If the prosecution without any good cause keeps the material witness away from the court, the court is entitled to infer every thing against the prosecution. For no good cause when neither the cleaner nor the driver is examined, it is not safe to accept the case of demand placing reliance on the evidence of Yusufkhan. Of course Yusufkhan states that the respondents No. 1 & 2 demanded the sum at the place of offence and then directed him to go to respondent No. 3 to pay the same but his say cannot be accepted without any corroboration. It may be noted that the panch No.1 has not supported the case about demand and acceptance. He was declared hostile. Further it is to be noted that Yusufkhan had 18 days prior to the date of incident had sold his metador to Karsanbhai Kalubhai. He was not thereafter plying his metador and was not carrying the passengers illegally. Hence the fact that respondent No.1 when met the driver & cleaner demanded the sums and so Yusufkhan had gone to see respondent No.1 appears to be doubtful. After the sale was effected, if demand was made, Yusufkhan could have made clear that there was no case to continue the practice as he had disposed of the vehicle. He however goes to Ahmedabad and lodges the complaint before Inspector, A.C. Branch. In view of such facts, the evidence of Yusufkhan does not appear to be trustworthy and prudence dictates for cogent corroboration which is wanting in the case. The learned Special Judge was therefore right in holding that case of demand is not proved.

6. Having found the case of the prosecution regarding demand doubtful, we will switch over to the issue regarding acceptance of the amount and examine its merits. Firstly, it may be stated that for the aforesaid reason, the evidence of the complainant is not worthy of credence and when panch No.1 does not support on this point also, his testimony about the acceptance of the amount by respondent No.3 falls flat. Of course the respondents No. 1 & 2 have not personally accepted the amount. It is alleged by the prosecution that they directed the complainant to go to respondent No.3 on their behalf and make the payment because respondent No.3 was acting as their agent. On this point, the evidence is not worthy of credence but without entering into that point in details, if we accept that evidence as it is and believe that for and on behalf of respondents No. 1 & 2, respondent No.3 was accepting the amount, the case of acceptance cannot be said to have been clearly

established.

7. Before we proceed on the factual aspect, it is necessary to state about the law made clear by this Court in aforesaid two decisions. Referring to the decisions rendered in the cases of Raghbir Singh Vs. State of Punjab - AIR 1976 S.C. 91, Nathalal Govindji Vaghela Vs. State of Gujarat - XX (2) G.L.R. 190, Khilli Ram Vs. State of Rajasthan - 1985 S.C.C. (Cri.) 24, Shri Dilip Kumar Roy Vs. State of West Bengal & Ors. - 1993 (3) Crimes 167, and Ambalal Motibhai Patel Vs. State - AIR 1961 Gujarat Page 1, it is made clear that it is desirable that the currency notes to be used for the purpose of trap should be treated with phenolphthalein powder and not with anthracene powder so that the handling of such marked currency notes by the public servant can be detected by chemical process, and the court does not have to depend upon oral testimony which is some times of a dubious character for the purpose of deciding the fate of the public servant. In the case of anthracene powder, the witness may tell about particular marks being found and viewed by him under the ultraviolet lamp. It still rests entirely on the oral evidence of the witnesses in whose presence the experiment is alleged to witnesses in whose presence the experiment is alleged to veracity by reference to any scientific method of testing and analysis, which is surely available in a case in which phenolphthalein powder is used. In the case of phenolphthalien powder, the court would certainly be sure to draw a particular conclusion as there is no possibility of drawing any other conclusion which may not be the case when the anthracene powder is used. When in this case anthracene powder is used, though in the aforesaid decision the law is made clear, it would not be just and proper to conclude against the respondents simply on the basis of some light blue marks that could be noted by the Investigating Officer and the complainant Yusufbhai. When use of the anthracene powder is not the guarantee about acceptance of the amount because of the above stated uncertainty and other possibilities, it would not be just and proper to accept the say of the complainant and Investigating Officer on the point of acceptance and hold that respondent No.3 accepted the amount. If that aspect is kept aside because of this reason, there is no evidence on record except the bare testimony of the complainant on the point of acceptance and that bare testimony of the complainant is not worthy of credence for the reasons stated hereinabove.

8. In any case, thus, the prosecution has failed to establish the vital parts constituting the offence,

namely demand and acceptance. When that is not proved, the offence cannot be said to have been constituted. The learned Special Judge was, therefore, perfectly right in drawing the conclusion that the case of demand and acceptance was doubtful and charge could not be said to have been established.

9. For such reasons, we see no justifiable reason to upset the findings and the acquittal order of the lower court. The appeal is, therefore, devoid of merits and is required to be dismissed. The same is accordingly dismissed, maintaining the order of acquittal.

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(rmr).